



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kleen-Rite Corporation

File: B-232194

Date: September 13, 1988

DIGEST

Where a procuring agency renders a protest academic by taking the corrective action requested by the protester, the General Accounting Office has no legal basis on which to find the protester entitled to its protest costs.

DECISION

Kleen-Rite Corporation protests certain provisions of request for proposals (RFP) No. IRS 89-001, issued by the Internal Revenue Service (IRS) for cleaning the Main IRS Building in Washington, D.C. The protester also requests that it be awarded the costs of filing and pursuing the protest.

Kleen-Rite protested a number of solicitation provisions as defective or ambiguous and asserted that an improper Department of Labor wage determination was made applicable to this procurement. In response to the protest, the IRS issued an amendment which, it stated, addressed all the protester's concerns with the exception of the wage determination issue, which was referred to the Department of Labor. The contracting officer recommended denial of Kleen-Rite's claim for protest costs, noting that "a letter to the Contracting Officer would have obtained the same result."

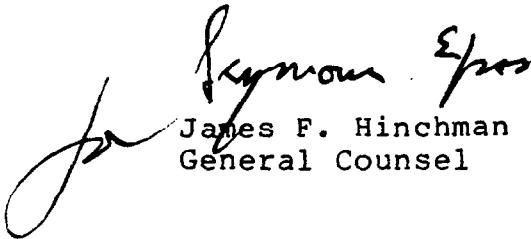
After reviewing the IRS report, Kleen-Rite concedes that "it has received the remedy which it sought in its protest, and it therefore dismisses its protest." It requests, however, that it be awarded its protest costs, including attorneys' fees. It disputes the contracting officer's statement that a letter would have sufficed, based on the transcript of the preproposal conference held for this procurement which, Kleen-Rite asserts, reflects an "unyielding" attitude on the part of the IRS in response to offerors' questions concerning two subject areas included in Kleen-Rite's protest. Kleen-Rite, who did not attend the conference, has not

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identified the specific passages upon which it relies in the 70 pages of text; our reading suggests that even when the discussion did touch upon the same subject areas that concerned Kleen-Rite, it was not focused in the same manner as the protest. We also note that the IRS did amend the solicitation in response to questions posed at the conference.

In any event, our authority to award a protester costs is provided by the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554(c)(1) (Supp. IV 1986), as implemented by our Bid Protest Regulations, 4 C.F.R. § 21.6 (1988). This authority is expressly predicated upon a determination by this Office that a solicitation, proposed award, or award does not comply with a statute or regulation. Monarch Painting Corp., B-220666.3, Apr. 23, 1986, 86-1 CPD ¶ 396. Here, our Office has not made such a determination since the protest issue has become academic. Consequently, there is no basis upon which to declare Kleen-Rite entitled to reimbursement of its costs. Sealift Shipyards of Texas, B-231857, July 25, 1988, 88-2 CPD ¶ 81.

The protest is dismissed and the claim is denied.


James F. Hinchman
General Counsel